

**AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND  
THE CITY OF MILPITAS  
FOR EMERGENCY MEDICAL DISPATCH SERVICES**

**BACKGROUND**

The City of Milpitas (“City”) wishes to contract with a provider of emergency medical dispatch (“EMD”) services for the provision of EMD services on its behalf. This Agreement Between the County of Santa Clara and the City of Milpitas for Emergency Medical Dispatch Services (“Agreement”) outlines the terms and conditions by which the County of Santa Clara (“County”) shall provide effective, timely and efficient emergency medical dispatch services for the City.

**THE AGREEMENT**

**Article 1. Nature of Services**

**1.1 Scope of Services**

The service obligations of the parties are described in Exhibit A, which is attached and incorporated into this Agreement.

**Article 2. Compensation**

**2.1 Amount of Payment**

The City shall compensate the County for the services provided under this Agreement in accordance with the cost methodology set forth in Exhibit B.

**Article 3. Term and Termination**

**3.1 Term of Agreement**

This Agreement is effective for five (5) years beginning at 12:00 a.m., July 1, 2015 and ending at 11:59 p.m. on June 30, 2020, unless terminated earlier in accordance with Section 3.2 or extended pursuant to the provisions herein.

**3.2 Termination**

- (a) Termination for Cause. Either party may terminate this Agreement for cause upon written notice to the other in accordance with Section 6.1. For purposes of this Agreement, cause includes, but is not limited to, a material breach of this Agreement or a violation of any applicable laws. Such notice will specify the reason for termination and will indicate the effective date of the termination.
- (b) Opportunity to Cure

- (1) The non-breaching party will give written notice of a material breach to the breaching party, specifying the breach.
- (2) The breaching party will not be deemed in default of this Agreement and the non-breaching party will not institute proceedings or exercise any remedies against the breaching party unless the breach has not been cured, corrected or remedied within:
  - (A) 15 days after notice of the breach is provided; or
  - (B) upon mutual agreement of the parties, within a longer period as may be reasonably required to cure, correct or remedy the breach, provided the breaching party has commenced to cure, correct or remedy the breach within 15 days after notice is provided and diligently and continuously pursues such cure, correction or remedy.
- (c) Termination for Convenience

Either party may terminate this Agreement without cause by giving the other party ninety (90) days written notice.
- (d) Compensation in the Event of Termination

In the event of termination, the County shall be entitled to compensation for services performed prior to the effective date of the termination as provided herein.

## **Article 4. Liabilities and Indemnification**

### **4.1 Mutual Indemnification**

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the County and the City agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify, defend with counsel acceptable to the non-indemnifying party, whose approval shall not be unreasonably withheld, and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring wholly by reason

of the negligent acts or omissions or willful misconduct of the other party hereto, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other party under this Agreement.

## **Article 5. Dispute Resolution**

In the event of any dispute between the parties arising from or relating to this Agreement, the parties will attempt to resolve the dispute initially by informal means. Upon the request of either party, the contract administrators of each party will meet to discuss the dispute, will exchange any information that they mutually agree is relevant to the issues in dispute, and will use all reasonable efforts to resolve the dispute without the need for further proceedings.

## **Article 6. Miscellaneous**

### **6.1 Notice**

All notices required by this Agreement will be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such other address as the party may designate in writing:

To the City:

Attn: Chief of Police  
City of Milpitas  
Milpitas Police Department  
1275 N. Milpitas Blvd.  
Milpitas, CA 95035

To the County:

Attn: Communications Director  
County of Santa Clara  
Communications Department  
2700 Carol Dr.  
San Jose, CA 95125

### **6.2 Compliance and Nondiscrimination**

The parties will comply with all applicable Federal, State, and local laws and regulations. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of

1964 as amended, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973 (Sections 503 and 504), the California Fair Employment and Housing Act (Government Code sections 12900 et seq.), and California Labor Code sections 1101 and 1102. The parties will not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor will the parties discriminate in the provision of services provided under this Agreement because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

### **6.3 Relationship of Parties; Independent Contractor**

County will perform all work and services described in this Agreement as an independent contractor and not as an officer, agent, servant or employee of City. None of the provisions of this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between the parties other than that of independent parties contracting with each other for purpose of effecting the provisions of this Agreement. The parties are not, and will not be construed to be in a relationship of joint venture, partnership or employer-employee. Neither party has the authority to make any statements, representations or commitments of any kind on behalf of the other party, or to use the name of the other party in any publications or advertisements, except with the written consent of the other party or as is explicitly provided in this Agreement.

### **6.4 Governing Law**

This Agreement has been executed and delivered in, and will be construed and enforced in accordance with, the laws of the State of California.

### **6.5 Assignment**

The parties may not assign this Agreement or the rights and obligations hereunder without the specific written consent of the other.

### **6.6 Entire Agreement**

This document represents the entire Agreement between the parties with respect to the subject matter hereof. All prior negotiations and written and/or oral agreements between the parties with respect to the subject matter of this Agreement are merged into this Agreement.

## **6.7 Amendments**

This Agreement may only be amended by an instrument signed by the parties.

## **6.8 Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

## **6.9 Severability**

If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

## **6.10 Waiver**

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing, and shall apply to the specific instance expressly stated.

## **6.11 Survival**

All provisions of this Agreement allocating liability between the City and the County, payment obligations, and the duty to defend, indemnify and hold harmless shall survive the termination of this Agreement.

## **6.12 Integration and Order of Precedence**

This Agreement, including all Exhibits, represents the entire and integrated contract between the City and the County and supersedes all prior negotiations, representations, or agreements, either written or oral. In the event of a conflict between the provisions of the main body of the Agreement and its Exhibits, the provisions of the main body shall control. In the event of a conflict between Exhibits A and B, the provisions of Exhibit A shall control.

## **6.13 Time of the Essence**

The parties acknowledge that time is of the essence of this Agreement. Either party's failure to complete any of the obligations outlined herein during the term of the Agreement shall be deemed a breach of the Agreement.

**6.14 Amendment.**

The parties may amend this Agreement only by a writing signed by all the parties.

IN WITNESS WHEREOF, the COUNTY and CITY have caused this Agreement to be executed by their duly authorized representatives as of the day and year written above.

**Signed:**

COUNTY OF SANTA CLARA

CITY OF MILPITAS

by \_\_\_\_\_  
Dave Cortese, President  
Board of Supervisors                      Date

by \_\_\_\_\_  
Thomas C. Williams  
City Manager                      Date

Attest:

Attest:

\_\_\_\_\_  
Megan Doyle,  
Clerk of the Board of Supervisors

\_\_\_\_\_  
Mary Lavelle, City Clerk

Approved as to Form and Legality:

Approved as to Form:

\_\_\_\_\_  
Donald Larkin, Deputy County Counsel

\_\_\_\_\_  
City Attorney

Exhibits to this Agreement:

Exhibit A – Emergency Medical Dispatch (EMD) Process, Procedural Requirements

Exhibit B – Compensation for Services

## Exhibit A

### Emergency Medical Dispatch Process & Procedural Requirements

To ensure the safe and efficient transfer of callers requiring Emergency Medical Dispatch (EMD) services from Milpitas Communications to County Communications, Milpitas Communications and County Communications agree to process 9-1-1 and ten-digit emergency calls using the following process and procedural requirements:

1. Milpitas Communications will use a “3-way” telephone call transfer process to route callers to County Communications for EMD services. This process will:
  - Use a “one-button” method to minimize transfer time;
  - Result in Milpitas telecommunicators:
    - Using a scripted transfer statement prior to caller transfer; and
    - Remaining on the line silently until the provision of an MPDS “Determinant” or until call demand requires them to leave the call.
2. County Communications will provide Milpitas Communications with continuous (24 hours per day, 7 days per week) EMD services using International Academy of Emergency Dispatch (IAED) certified Emergency Medical Dispatchers. All dispatchers providing EMD services will use the most current version of the Medical Priority Dispatch System as determined by the IAED.
3. County Communications will use IAED certified Emergency Medical Dispatch Quality (EMD-Q) reviewers to review and evaluate protocol compliance reports. The number and method of cases for review will be in accordance with current IAED Accreditation requirements.
4. County Communications agrees to participate in periodic “special case” reviews, in the event they are requested by Milpitas Communications.
5. County Communications and Milpitas Communications agree that the determination “EMD Is Unavailable” will occur following a “three-ring” wait time for EMD caller transfers to County Communications for 911 or designated ten-digit number transfers.
6. County Communications and Milpitas Communications agree to work together to develop or revise policies and procedures for the receipt and management of callers requiring EMD services following written request by either agency.
7. County Communications will include Milpitas Communications and Milpitas Fire Department personnel in quality improvement feedback processes through the Medical Dispatch Review Committee used to maintain and improve EMD compliance to protocol.

County Communications will also provide quarterly protocol compliance reports based on compliance levels and deviation percentages in Case Entry, Chief Complaint, Key Questions, Dispatch Life Support, Final Code, and Customer Service. To meet this standard, EMD Dispatchers must demonstrate that no more than 10% of cases fall in the Partial Compliance Level, no more than 10% of cases fall in the Low Compliance Level, and no more than 7% of cases fall in the Non-Compliant Level.

8. County Communication will maintain the following compliance levels for each of the following EMD and caller transfer processes:

Standards for ACE Re-Accreditation:

	ACE				
High Compliance					
Compliant					
Partial Compliance	20%				
Low Compliance	20%				
Non-Compliance	20%				
Percentage of Deviation Accepted	Critical Deviation	Major Deviation	Moderate Deviation	Minor Deviation	
Case Entry	2%	3%	3%	3%	
Chief Complaint	5%	3%	4%	5%	
Key Questions	3%	3%	5%	5%	
Dispatch Life Support	4%	3%	3%	6%	
Final Code	6%	8%	10%	10%	
Customer Service	2%	2%	2%	5%	
Total Accreditation Acceptance	3%	5%	6%	3%	

The above graduated scale applies to required biannual reports to the IAED.

9. County Communications will provide eight pocket user guides to Milpitas Fire Department.



Exhibit B  
Compensation for Services

Cost Methodology

County Emergency Medical Dispatch (EMD) Program costs include:

1. Salary Costs: Premium paid to EMD-certified Communications Dispatcher I or as fixed in base salary equivalent to premium pay for Communications Dispatcher II, III, and Senior Communications Dispatcher level classifications.

2. Other Expenses:

- EMD Certification training course fees.
- Educational materials.
- Medical Priority Dispatch System (MPDS) protocols card-set/software and maintenance costs.

The County's EMD Program costs will be apportioned between the parties in proportion to the number of medical calls handled for the City compared to the total number of medical calls handled for the County (and other entities). EMD Program costs will be based on the most current budget cost information available for the next fiscal year and will be established each year of the Agreement by March 31 to be effective the following July 1. Call volume will be based on the last fiscal year for which there is complete data (e.g., on March 31, 2015, estimated call volume for FY 2016 will be based on FY 2014 data). After July 1, an adjustment of +/- 5% will be made to the City's cost, if actual County EMD Program costs or City's call volume are determined by the County to vary significantly from the previously estimated number. For this purpose "vary significantly" means having the effect of increasing or decreasing the City's cost by more than 1%. The County will notify City of any adjustment prior to billing the City's final fourth quarterly installment.

Program Cost for Fiscal Year 2014 (and Example Methodology for Outlying Years):

\$437,033	FY 2016 EMD Premium Pay Cost (72.5 EMD Certified Dispatchers)
<u>\$ 31,484</u>	FY 2016 EMD Educational and Other Expenses
\$468,517	Total FY 2016 County EMD Program cost (as of 02/04/2015)
X	2/3 Percent to be allocated
<u>\$312,345</u>	
<u>13.81 %</u>	% Milpitas Medical Calls (see calculation below)
\$ 43,140	Milpitas EMD Cost for FY 2016 (subject to +/- 5% adjustment after July 1, 2015)
9.3 = Average number of Milpitas Medical Calls per day in FY 2014	
58.3 = Average number of Medical Calls per day handled in FY 2014 by County in jurisdictions where County provides EMD services	
67.7 = Total average number of County + Milpitas Medical calls in FY 2014	
13.81 = % of Total FY14 Medical calls projected as Milpitas calls (9.3/67.7) per County Communications activity counts.	